YAAKUB FOONG v. LAI MUN KEONG & ORS.

[O.C.J. (Shankar J.) January 12, 1986]

[Johore Bahru – Civil Suit No. 204 of 1983]

Damages – Hip injuries – Quantum – Dispute as to plaintiff's earnings – Malaysian citizen working in Singapore on work permit – Earning from additional work in contravention of permit.

Tort – Road accident – Hip injuries – Quantum.

Tort – Personal injury – Hospitalization – Right of claimant to.

On July 26, 1982, the plaintiff, then 51 years old, was on his motor-cycle when he was run into by the first defendant. He suffered hip injuries. Liability was admitted and the only dispute was the quantum of the plaintiff's earnings. The plaintiff, a Malaysian citizen, claimed that he worked in Singapore and admitted that he did not pay any income tax and even performed additional work in contravention of his work permit.

Held: (1) it must be a matter of concern for a Malaysian Court that Malaysian nationals should be discouraged from abusing the privileges of host countries when they go abroad. The proximity of Singapore to the Federation must make this observation doubly significant. Consequently, if there had been cogent evidence as to the precise amount of tax payable by the plaintiff and of the amount which he had illegally earned in contravention of his work permit, the Court would have discounted the damages arithmetically due to the plaintiff on both counts;

(2) the plaintiff was awarded damages for pain and suffering and loss of amenities: $25,000; cost of total hip replacement and two-month rehabilitation period: $10,000; pre-trial to date of judgment loss of earnings: $14,700; future loss of earnings: $2,100; special damages: $1,560. Interest was awarded at 4% p.a. on the special damages of $16,260 from date of service of writ to date of judgment, and at 8% p.a. on the general damages of $37,100 from date of service of writ. As from the date of judgment up to realization, interest will run at 8% p.a. on the global sum.

Cases referred to:

(1) *Kang Bark Teng & Anor.* v. *Lee Kwee Lim & Anor.* [1952] M.L.J. 27.
(2) *Tan Chooi Thin (w) & Anor.* v. *Teo Whee Hong* [1953] M.L.J. 203.
(3) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216.

CIVIL SUIT.

Jegatheeson for the plaintiff.

M. Varughese for the defendants.

Cur. Adv. Vult.

Shankar J.: Until July 26, 1982 the plaintiff who was then 51 years old, was a sawyer. He claims to have been dealing with timber logs for more than 20 years, having started work as such in Singapore in 1965.

He is now claiming damages for the injuries he sustained. Liability is admitted. Special Damages have been agreed at $1,560 excluding the claim for loss of earnings.

The plaintiff was on his motor-cycle when he was run into by the first defendant. He did not lose consciousness. There were no external injuries but on hospitalisation the same day, x-rays showed posterior dislocation of the left hip joint with a fracture of the acetabulum. He remained in the General Hospital in Johore Bahru until August 10, 1982 when he was transferred to the Singapore General Hospital where on August 16, 1982 the fracture in his hip was reduced and fixed in place with a screw. He was discharged from the hospital on September 5, 1982. On March 1, 1983 he was seen by Dr. Thambyrajah of the Johore Specialist hospital. *Inter alia*, the muscles of the left lower limb were found to be weaker than those on the right and the head of the femur was found to be undergoing avascular necrosis. The medical opinion was this would cause a painful left hip which would get progressively worse. Standing and walking, especially if it involved carrying weights, would get progressively painful and squatting was already difficult then and could get impossible in time to come. The plaintiff is not able to climb stairs. The prognosis was that in time to come he would require a replacement of the left hip joint with prosthesis.

Having taken into consideration the various authorities cited by counsel on the proper award under the head of Pain and Suffering and Loss of Amenities for the dislocation and the fracture, I award a figure of $25,000. Dr. Thambyrajah has stated that the cost of the total hip replacement is about $9,000 and that the period of rehabilitation following surgery may take about 2 months. I consider it reasonable to award a round figure of $10,000 under this head.

Defence counsel is insistent that the plaintiff should get himself treated in the Government Hospital in Johore Bahru because it is cheaper by half. As to this, it is my view that a claimant is entitled to have himself treated in a private hospital if in all the circumstances that is not an unreasonable thing for him to do.

The contentious area here was the quantum of the plaintiff's earnings.

In his examination-in-chief he stated that he had started working in Singapore in 1965 for various companies. In 1977 it was for Hong Huat Company. In 1979 it was with Soong Guan Co. in Sabah. In 1980 he resumed with Hong Huat Company. On May 5, 1982 he started with Chye Lian Huat. Here he claimed he earned $800 per month on an average. The working hours were from 7.30 a.m. to 5.00 p.m. In addition to his salary he claims he earned commission on the amount of timber sawn and the standard rate was $15 to $16 per ton. In addition he claimed he did night work for 12 days per month from 6.00 p.m. to 9.00 p.m. for which he was paid $20 per night on a daily basis. The average earning for night work per month was $220 to $250. Total estimated earnings per month was $1,030. Between May 25, 1982 up to July 23, 1982 when he met with the accident, he was working on a lump sum contract with Ernest Trading Co. Ltd. Payment was made on the basis that he was a Contractor and the lump sum was $3,572. The work was required to be performed in Pekan Baru in Indonesia and at the time of the accident in Johore Bahru the plaintiff claimed that he was on a holiday.

Not one of his employers was called to support this testimony. No income tax returns were produced. In fact the plaintiff admitted that he did not pay any income tax. Whilst he was working for Chye Lian Huat, the plaintiff admits that the additional work that he performed outside at night was in contravention of his work permit.

The plaintiff did not at any time withdraw any money from his CPF. Yet the total balance in his ordinary account on January 1, 1982 was only $1,489.20. The contribution for that year was $315.50. With interest the balance on January 1, 1983 in the ordinary account was $1,908.46. The CPF Board Statement dated November 25, 1982 discloses that the current quarter contribution at that time was $80, and that the last contribution received from Chye Lian Huat Sawmill Co. on November 8, 1982 for October 1982 was $40. These figures cannot be reconciled with the plaintiff's claim for monthly earnings in excess of $1,000.

Plaintiff's counsel submits that it is irrelevant for this Court to concern itself as to whether the plaintiff paid tax in Singapore or whether his earnings were in contravention of his work permit.

With respect I am unable to agree.

It is too well established that the plaintiff's pecuniary loss must be computed after taking into account deductions which would have been made on his earnings by way of tax, in cases where his damages will not be subject to tax in his hands. Furthermore, it is well established that *ex turpi causa non oritur actio.* It is no part of a Court's function to compensate a plaintiff for profits which he would have made from an illegal activity had he not been injured. Mr. Jegatheeson has quoted two cases in support of his view. In *Kang Bark Teng & Anor.* v. *Lee Kwee Lim & Anor.*[1] the Singapore High Court declined to have regard to the fact that the deceased was an unlicensed pork seller. Notwithstanding that his business was committed in breach of the Municipal Ordinance, the Court nevertheless struck a balance between the alternative possibility of the law being repealed and the law being strictly enforced *i.e.* in considering the deceased's position from one of stability to one where he could be driven out of business altogether. *Tan Chooi Thin (w) & Anor.* v. *Teo Whee Hong*[2] is another case where the Court declined to take into account the fact that the deceased was alleged to be deriving some income from private trading by importing and exporting precious stones in contravention of the Customs Legislation. In fact there was no evidence from which the Court could make such a finding but nevertheless Buhagiar J. held that even if the allegation was a fact, he did not think that the profits made from that business could be excluded in reckoning the deceased's earnings.

The observation was clearly *obiter.*

The plaintiff is a Malaysian citizen. It must be a matter of concern for this Court that Malaysian nationals should be discouraged from abusing the privileges of host countries when they go abroad. The proximity of Singapore to the Federation must make this observation doubly significant.

Consequently I would state it as the view of this Court that if there had been cogent evidence before me as to the precise amount of the tax payable by the plaintiff and of the amount which he had illegally earned in contravention of his work permit, I would have discounted the damages arithmetically due to the plaintiff on both counts.

However this is a case where the EPF returns clearly show that the plaintiff has grossly exaggerated what he was really earning. I agree with Mr. Varughese that it is unsafe to find that the plaintiff earned more than $300 to $400 per month at best. Consequently I propose to take the figure of $350

per month as representing the monthly loss to the plaintiff. From the date of the accident up till today, he will consequently be awarded 42 months loss of earnings which at $350 per month yields $14,700.

For future loss of earnings, Mr. Varughese says that nothing should be awarded beyond the age of 55 and he relies on *Murtadza's* case.[3] I had the benefit of ingesting the comments of Chang Min Tat F.J. at page 218H and I am of the view that for the reasons there stated 55 years represents the end of the plaintiff's useful working life in this particular case. It has to be remembered that this plaintiff was found to have ischaemic heart disease when he was in hospital. At the date of the trial in May 1985 he was 54 years old. I would therefore give him a further 6 months for future loss of earnings *i.e.* $2,100. So I award interest at the rate of 4% on the special damages of $16,260 from the date of the service of the writ up to the date of judgment, and at the rate of 8% per annum on the general damages of $37,100 also from the date of the service of the writ.

As from the date of judgment up to realisation, interest will run at the rate of 8% on the global sum I have awarded up to realisation.

The plaintiff will also have his costs to be taxed and paid by the defendants.

Order accordingly.

Solicitors: *John Ang & Jega; Varughese & Co.*

KARPAL SINGH v. PUBLIC PROSECUTOR

[O.Cr.J. (Anuar J.) January 16, 1986]

[Ipoh – Perak Criminal Application No. 32 of 1985]

Criminal Law and Procedure – Illegal assembly – Member of – Warrant of arrest – Legality – Whether warrant or summons should be issued – Setting aside warrant – Police Act 1967, ss. 27(5)(a), (6) & (8) – Criminal Procedure Code (F.M.S. Cap. 6), s. 47.

The applicant was alleged to have committed an offence under section 27(5)(a) of the Police Act 1967 on August 30, 1984, by being a member of an illegal assembly in Kampar, Perak. The police applied for and obtained a warrant of arrest issued by the Kampar Magistrate's Court on October 1, 1985. The applicant was arrested and released on police bail. He applied for an order to set aside the warrant.

Held: (1) as this is a summons case, a summons not a warrant should be in the first instance;

(2) there is no indication that the applicant had absconded or that he would not obey a summons. Nor were there any reasons given by the learned Magistrate in issuing the warrant. In the event, the issue of a warrant was wrong in law and therefore illegal;

(3) it has to be borne in mind that it is the cardinal principle of law that in criminal cases the provisions of the law must be strictly followed. In the present case, ordinarily a Magistrate may only issue a summons. He cannot issue a warrant unless there is good reason for him to do so. In the absence of any good reason, the issue of a warrant would be wrong and illegal. The applicant was therefore illegally arrested;

(4) the warrant was accordingly set aside.

Cases referred to:

(1) *Perumal* v. *Public Prosecutor* [1970] 2 M.L.J. 265.
(2) *Saminathan* v. *Public Prosecutor* [1937] M.L.J. 39.
(3) *Saw Kim Hai* v. *R.* [1956] M.L.J. 21.

CRIMINAL APPLICATION.

Karpal Singh in person.

Madam Su Geok Yiam (Deputy Prosecutor) for the respondent.

Cur. Adv. Vult.

Anuar J.: The applicant is alleged to have committed an offence under section 27(5)(a) of the Police Act 1967 on August 30, 1984 by being a member of an illegal assembly at a Chinese Assembly Hall at Kopisan Baru Gopeng, Kampar, Perak. On October 1, 1985 the police applied for a Warrant of Arrest against the applicant which warrant was issued by the Kampar Magistrate's Court on the same day and the applicant was later arrested at Georgetown Police Station on October 25, 1985. The applicant was released on police bail subject to the condition that he presents himself at the Kampar Magistrate's Court on November 16, 1985.

The applicant first applied to the High Court at Penang to have the Warrant of Arrest set aside. However, the learned Judge declined to exercise his jurisdiction on the grounds that the proper forum to hear the application should be the High Court in Ipoh. In the event the applicant now applies to this Court to have the Warrant of Arrest set aside on the grounds that the said Warrant of Arrest had been issued without any legal authority.